

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

NET JUMPER SOFTWARE, L.L.C.
a Michigan limited liability corporation,

Plaintiff/Counterclaim
Defendant,

Civil Action No. 04-70366-CV
District Judge Julian Abele Cook, Jr.

v.

Magistrate Judge R. Steven Whalen

GOOGLE INC.,
a Delaware corporation

Defendant/Counterclaim
Plaintiff.

DECLARATION OF JASON W. WOLFF

I, Jason W. Wolff, a principal at Fish & Richardson P.C. and counsel of record for Google Inc. (“Google”), do hereby state the following to be true to the best of my information and belief:

1. On May 20, 2008, I inquired regarding the status of the reexamination of the '172 patent with Examiner Majid Banankhah, who was forwarded the granted reexamination request on January 15, 2008. (*See* Exhibit 8 attached to Motion.) While Examiner Banankhah cannot substantively discuss the reexamination, he did inform me that he expects to issue another Office action some time within the next two to three months.

2. Google’s liability expert, for the issues of noninfringement and invalidity, Joseph Hardin, is presently out of the country and has several pre-existing business commitments before trial, which interfere with his and Google’s trial preparation, including: (1) Prof. Hardin is presently preparing for another business commitment through June 10; (2) Prof. Hardin is attending a conference on June 11-12; (3) Prof. Hardin is in Canada from June 13-27; and (4) Prof. Hardin is attending another conference in France from June 28-July 8.

3. Google presently intends to rely on testimony of several non-party witnesses, including:

a. Edward Mendelsohn, regarding several pieces of prior art (Mr. Mendelsohn is on vacation from June 13 through late August, but will sit for a deposition before trial wherever he is located at the time his deposition is sought) (Mr. Mendelsohn was timely identified in Google's witness list (Dkt. No. 57) (witness 5));

b. Randall Stark, a fact witness pertaining to Google's key piece of prior art, the CyberPilot software, presently resides in England and tentatively plans on attending a conference in Toronto the same week as the trial; depending on how the Court sets the trial days, Dr. Stark may be unavailable for trial if the July 22 date is kept (Dr. Stark was timely identified in Google's witness list (Dkt. No. 57) (witness 3)); and

c. Russell Beale, a fact witness regarding the authenticity/admissibility of another key set of prior art, presently resides in England and is on sabbatical at present and into the summer, so we have not been able to confirm his availability (Dr. Beale is a witness under category 9 of Google's timely witness list (Dkt. No. 57) regarding documents for which the authenticity and/or admissibility of the document is disputed by NetJumper).

4. One of Google's witnesses, Breen Hagan, who was a 30(b)(6) witness, has left the company and a replacement is being sought. Another Google 30(b)(6) witness, Alex Pau, no longer serves in the capacity in which he previously testified and a replacement is also being sought. A replacement for another Google 30(b)(6) witness, Jeff Shardell, is also being sought (the present candidate has a conflict beginning on July 30 in the event that trial is not concluded by then).

5. Trial counsel for Google, Howard Pollack and Frank Scherkenbach, have a pre-arranged mock-jury trial in another matter on the dates of July 26-27 in Delaware, which, depending on the time allotted for trial, interferes with the July 22 trial date.

CERTIFICATE OF SERVICE

I hereby certify that on May 28, 2008, I electronically filed DECLARATION OF JASON W. WOLFF, with the Clerk of the Court using the ECF system, which will send notice of such filing upon the following attorneys: ANDREW KOCHANOWSKI and MICHAEL H. BANIAK.

By: /s/ Jason W. Wolff
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